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Company. There was a judgment for plaintiff, and defendant brings error. Affirmed.

*H. W. Anderson, A. B. Guigon, and T. Justin Moore*, all of Richmond, for plaintiff in error.

*O'Flaherty, Fulton & Byrd*, of Richmond, for defendant in error.

PERKINS *v.* SOUTHERN RY. CO.

March 11, 1915. Rehearing Denied June 10, 1915.

[85 S. E. 401.]

**1. Railroads (§ 350\*)—Accident at Crossing—Question for Jury—Contributory Negligence.**—In an action for injury at a crossing, where defendant's negligence in failing to give the statutory signals was conceded, held, on conflicting evidence involving the intelligence and veracity of witnesses, that plaintiff's contributory negligence was for the jury.

[Ed. Note.—For other cases, see Railroads, Cent. Dig. §§ 1152-1192; Dec. Dig. § 350.\* 4 Va.-W. Va. Enc. Dig. 143; 14 Va.-W. Va. Enc. Dig. 300; 15 Va.-W. Va. Enc. Dig. 242.]

**2. Railroads (§ 346\*)—Accident at Crossing—Burden of Proof—Contributory Negligence.**—In an action for injuries at a crossing, the burden of establishing plaintiff's contributory negligence was on the defendant.

[Ed. Note.—For other cases, see Railroads, Cent. Dig. §§ 1117-1123; Dec. Dig. § 346.\* 4 Va.-W. Va. Enc. Dig. 142; 14 Va.-W. Va. Enc. Dig. 299; 15 Va.-W. Va. Enc. Dig. 247.]

Error to Circuit Court, Pittsylvania County.

Action by one Perkins against the Southern Railway Company. Judgment for defendant, and plaintiff brings error. Reversed, and judgment entered for plaintiff for the amount provisionally awarded by the verdict.

*Volney E. Howard* and *Wm. M. Murrell*, both of Lynchburg, for plaintiff in error.

NORFOLK SOUTHERN R. CO. *v.* WHITEHURST.

June 10, 1915.

[85 S. E. 458.]

**Carriers (§ 32\*)—Interstate Commerce—Preferences—Right of Shippers.**—The rules of the Interstate Commerce Commission, formulated pursuant to U. S. Comp. St. Supp. 1911, c. 1 (U. S. Comp. St.

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

1913, §§ 8563-8604), declare that the privilege of diverting cars is of value to the shipper, and in order to avoid discrimination it is necessary for the carrier that grants such privilege to publish in its tariff that fact, together with the conditions under which it may be used. Pursuant to that regulation a carrier adopted a tariff and conditions upon which diversions would be made, which provided that parties making request for change of destination must furnish satisfactory proof of ownership and acceptable form of bond. The carrier by an arrangement made over the telephone agreed to divert a shipment. Held, that the regulations were not imposed solely for the benefit of the carrier, but, being intended to place all shippers upon the same plane and prevent unfair preferences among them, the carrier could not waive the regulation and allow diversion in an unauthorized manner.

[Ed. Note.—For other cases, see *Carriers*, Cent. Dig. §§ 83-85; Dec. Dig. § 32.\* 2 Va.-W. Va. Enc. Dig. 688; 14 Va.-W. Va. Enc. Dig. 186; 15 Va.-W. Va. Enc. Dig. 153.]

Error to Circuit Court of City of Norfolk.

Action by W. L. Whitehurst against the Norfolk Southern Railroad Company. There was a judgment for plaintiff, and defendant brings error. Reversed and remanded.

*Jas. G. Martin*, of Norfolk, for plaintiff in error.

*S. M. Brandt*, of Norfolk, for defendant in error.

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JONES & CO., Inc., *v.* C. W. HANCOCK & SONS.

June 10, 1915.

[85 S. E. 460.]

**1. Corporations (§ 517\*)—Actions—Affidavit with Plea.**—Under Code 1904, § 3286, providing that if in assumpsit plaintiff file with his declaration an affidavit made by himself or his agent that the amount is justly due, etc., no plea in bar shall be received unless defendant file with his plea the affidavit of himself or his agent, that the plaintiff is not entitled, etc., an affidavit of the president of defendant corporations was not sufficient in the absence of any averment therein of his agency, or any other evidence on the subject.

[Ed. Note.—For other cases, see *Corporations*, Cent. Dig. §§ 2047-2051; Dec. Dig. § 517.\* 2 Va.-W. Va. Enc. Dig. 57; 14 Va.-W. Va. Enc. Dig. 128; 15 Va.-W. Va. Enc. Dig. 94.]

**2. Judgment (§ 178\*)—Judgment by Default—Limitation of Time to Set Aside.**—Where, after an office judgment was entered in an action in assumpsit, defendant appeared and filed pleas of nonassumpsit and set-off, whereupon the office judgment was set aside, the ef-

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.